

accreditation of hospitals and licensed by the State Board of Health and Mental Hygiene; or "(2) Gives advice, counsel, or information for the purpose of causing, inducing or obtaining a termination of human pregnancy other than by such physician in such a hospital; or "(3) Knowingly assists or causes by any means whatsoever the obtaining or performing of a termination of human pregnancy other than by such physician in such a hospital."

Subsection b sets out the criminal penalties to be imposed for violation of Subsection a. Upon conviction a person who violates the subsection may be subject to a fine of not more than \$5,000.00 for each offense or imprisonment for not more than three years or both fine and imprisonment.

Article 43, Section 139 was reviewed in Vuitch v. Hardy, Civ. No. 71-1129-Y (D. Md. filed June 22, 1972), 473 F. 2d 1370 (4th Cir., 1973); and State v. Ingel, 18 Md. App. 514 (1973). In Vuitch, supra., the Court held unconstitutional that portion of Article 43, Section 139 that required performance of abortions in hospitals accredited by the Joint Commission on Accreditation of Hospitals and licensed by the Department of Health and Mental Hygiene. The District Court found that a woman has a constitutionally protected, fundamental personal right to seek an abortion and that Maryland has no compelling state interest which would be promoted by the hospitalization requirement. The Fourth Circuit affirmed on February 20, 1973, subsequent to the Supreme Court decisions in Roe and Doe, supra.

The Maryland Court of Special Appeals in Ingel, supra., held that the provision of Article 43, Section 139, that an abortion is a crime if done other than in an accredited and licensed hospital, is unconstitutional on its face, State v. Ingel, 18 Md. App. 514.

We therefore advise that the portions of Article 43, Section 139, making abortion a criminal act if done other than in an accredited and licensed hospital, have been declared unconstitutional.

Article 43, Section 137 provides in part that:

"(a) No person shall terminate or attempt to terminate or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth, except that a physician licensed by the State of Maryland may terminate a human pregnancy or aid or assist or attempt a termination of a human